

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUST FILM, INC., et al.,

Plaintiffs,

v.

MERCHANT SERVICES, INC., et al.,

Defendants.

AND ALL RELATED CROSS-CLAIMS

No. C 10-1993 CW

ORDER DENYING  
DEFENDANTS UNIVERSAL  
CARD, INC.; NATIONAL  
PAYMENT PROCESSING,  
INC.; AND JASON  
MOORE'S MOTION TO  
AMEND THE COURT'S  
NOVEMBER 29, 2010  
ORDER, DENYING AS  
MOOT DEFENDANTS  
UNIVERSAL CARD,  
INC.; NATIONAL  
PAYMENT PROCESSING,  
INC.; AND JASON  
MOORE'S MOTION TO  
SHORTEN TIME AND  
TRANSFIRST ENTITIES  
AND COLUMBUS BANK  
AND TRUST'S MOTION  
TO DISMISS FOR  
IMPROPER VENUE, AND  
DENYING WITHOUT  
PREJUDICE DEFENDANTS  
UNIVERSAL CARD,  
INC.; NATIONAL  
PAYMENT PROCESSING,  
INC.; AND JASON  
MOORE'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT  
(Docket Nos. 121,  
186, 188 and 195)

Defendants Universal Card, Inc.; National Payment Processing,  
Inc.; and Jason Moore (collectively, Movants) move to amend the  
Court's Order of November 29, 2010 and to shorten time for the  
briefing and the hearing on their motion to amend. Plaintiffs Just  
Film, et al., oppose the motion to amend. The motions were taken  
under submission on the papers. Thereafter, Movants sought partial  
summary judgment against Plaintiffs. Having considered the papers

1 submitted by the parties, the Court DENIES Movants' motion to  
2 amend, DENIES as moot Movants' motion to shorten time and DENIES  
3 without prejudice Movants' motion for partial summary judgment.  
4 Because TransFirst Holdings, Inc.; TransFirst, LLC; TransFirst  
5 Third Party Sales, LLC (collectively, TransFirst) and Columbus Bank  
6 and Trust Company (CB&T) are no longer Defendants in this action,  
7 their motion to dismiss for improper venue is DENIED as moot.

8 BACKGROUND

9 The Court's November 29, 2010 Order addressed seven motions to  
10 dismiss filed by Defendants. Based on a contractual provision  
11 requiring arbitration in Colorado, TransFirst and CB&T moved to  
12 dismiss for improper venue. The arbitration clause was purportedly  
13 contained in Merchant Card Processing Agreements (MCPAs) entered  
14 into by TransFirst, CB&T, and Plaintiffs Just Film, and its owner  
15 Volker Von Glasenapp; Rainbow Business Services d/b/a Precision  
16 Tune Auto Care, and its owner Jerry Su; Burlingame Motors, and its  
17 owner Verena Baumgartner; and Dietz Towing, Inc., and its owner  
18 Terry Jordan (collectively, Arbitration Plaintiffs). The  
19 arbitration clause on which TransFirst and CB&T relied did not  
20 apply to Plaintiffs The Rose Dress and Lewis Bae.<sup>1</sup> Although the  
21 other Defendants did not oppose TransFirst and CB&T's motion to  
22 dismiss, no other Defendant joined the motion or moved for similar  
23 relief. See Consol. Reply in Support of Mots. to Dismiss 6:10-12.

24 Movants sought to dismiss portions of Plaintiffs' complaint  
25 for failure to state a claim. With regard to Plaintiffs' claims  
26 for breach of contract and breach of the implied covenant of good

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27 <sup>1</sup> These Plaintiffs purportedly entered into an MCPA with Fifth  
28 Third Bank and Fifth Third Processing Solutions, Inc.

1 faith and fair dealing, Movants asserted that they "are not parties  
2 to any of the alleged contracts" and that it "goes without saying  
3 that movants cannot breach a contract to which they are not  
4 parties." Merchant Servs., Inc., et al., Mot. to Dismiss 5:3-4.  
5 The contracts Movants disavowed included Arbitration Plaintiffs'  
6 MCPAs, which contained the contested arbitration clause on which  
7 TransFirst and CB&T relied.

8 The Court reserved its decision on TransFirst and CB&T's  
9 motion to dismiss for improper venue. Arbitration Plaintiffs  
10 asserted that the inclusion of the arbitration clause at issue was  
11 the product of fraud. To resolve this threshold matter, the Court  
12 allowed TransFirst, CB&T and Arbitration Plaintiffs to undertake  
13 limited discovery and to file cross-motions for partial summary  
14 judgment concerning the alleged fraud.

15 The Court granted Movants' motion to dismiss Plaintiffs'  
16 breach of contract claims, agreeing that the contracts at issue,  
17 including Arbitration Plaintiffs' MCPAs, did not name Movants as  
18 parties.

19 Since November 29, Plaintiffs have voluntarily dismissed their  
20 claims against several Defendants. On January 18, 2011, Plaintiffs  
21 voluntarily dismissed their claims against TransFirst. On January  
22 19, 2011, they voluntarily dismissed their claims against CB&T.

23 DISCUSSION

24 Movants ask the Court to amend its November 29 Order so as to  
25 require Plaintiffs to respond to discovery propounded by TransFirst  
26 and CB&T before the claims against them were dismissed from this  
27 action. Movants also ask that the Order be amended to enable them  
28 to move for partial summary judgment regarding the enforceability

1 of the arbitration clauses, in the place of TransFirst and CB&T.  
2 Movants assert that, if the Court summarily adjudicates that the  
3 arbitration clauses in the MCPAs are enforceable, they intend to  
4 move to compel arbitration.<sup>2</sup>

5 Movants have not established good cause to amend the November  
6 29 Order. That Order permitted TransFirst, CB&T and Arbitration  
7 Plaintiffs to undertake limited discovery in order to resolve  
8 TransFirst and CB&T's motion to dismiss for improper venue. As  
9 noted above, Movants neither joined that motion nor moved for  
10 similar relief. Because TransFirst and CB&T are no longer  
11 Defendants in this action, their motion to dismiss is denied as  
12 moot. The discovery and cross-motions for partial summary judgment  
13 related to TransFirst and CB&T's motion are no longer necessary to  
14 resolve that motion. Because the November 29 Order did not  
15 authorize Movants to seek, at this time, partial summary judgment  
16 on this point, their motion for partial summary judgment is denied  
17 without prejudice.

18 CONCLUSION

19 For the foregoing reasons, Movants' request to amend the  
20 Court's Order of November 29, 2010 is DENIED (Docket No. 186). The  
21 Court DENIES as moot their motion to shorten time (Docket No. 187)  
22 and TransFirst and CB&T's motion to dismiss for improper venue  
23 (Docket No. 121). Movants' motion for partial summary judgment is  
24 DENIED without prejudice. (Docket No. 195.)

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26 <sup>2</sup> Notably, in their motion to dismiss, Movants asserted that  
27 they were not parties to MCPAs and, by extension, the contested  
28 arbitration clauses. Now, in their motion to amend, they suggest  
that they are entitled to avail themselves of contractual  
provisions they explicitly disavowed.

1 Because cross-motions for summary judgment based on TransFirst  
2 and CB&T's motion to dismiss for improper venue will not be filed,  
3 Plaintiffs shall file their second amended complaint (2AC) within  
4 fourteen days of the date of this Order. Defendants shall answer  
5 or move to dismiss the 2AC fourteen days after it is filed. Any  
6 motion to dismiss shall not seek dismissal of claims that have  
7 already been found cognizable, nor shall it repeat any arguments  
8 previously rejected by the Court. If Defendants intend to move to  
9 dismiss Plaintiffs' 2AC, those represented by the same counsel  
10 shall support their motion in a consolidated opening brief.  
11 Plaintiffs' opposition to the motions to dismiss shall be contained  
12 in a consolidated brief not to exceed forty-five pages filed  
13 fourteen days thereafter. Defendants may file their replies seven  
14 days after that. The motions will be decided on the papers, unless  
15 the Court sets a hearing. As stated in the Court's November 29  
16 Order, the Merchant Services Companies, Jason Moore, Alicyn Roy and  
17 Fiona Walshe need not answer the claims the Court has already found  
18 cognizable until fourteen days after the Court enters an order on  
19 any motion to dismiss the 2AC.

20 The case management conference, previously scheduled for March  
21 31, 2011, is continued to May 31, 2011 at 2:00 p.m.

22  
23 IT IS SO ORDERED.

24  
25 Dated: March 4, 2011



CLAUDIA WILKEN  
United States District Judge